Atty. Docket No. Q92689

PRELIMINARY AMENDMENT

U.S. Appln. No.: 10/567,565

**REMARKS** 

Upon entry of the claim amendments, Claims 14-54 will be all the claims pending in the

application, of which Claims 14, 24, 34, and 44 are independent.

Claim 24 recites that A is not (1) a phenyl group substituted with (i) one methyl group

and (ii) 0, 1, or 2 additional substituents selected from the group consisting of a methyl group

and halogen atoms, or (2) a 5-indanyl group. Claim 24 is supported by the application as

originally filed. As stated in In re Johnson, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA)

1977), where alternatives are positively recited in the specification, they may be explicitly

excluded in the claims. In the present case, the specification positively recites (1) and (2) above

at, for example, page 18, lines 9-13.

As for Claim 44, it recites that R<sup>3</sup> is not 1,1-dioxidotetrahydro-2H-thiopyran-4-yl, which

is also supported by the application as originally filed, in accordance with Johnson. For

example, the specification positively recites the alternative of a tetrahydro thiopyranyl, wherein

the sulfur atom of the ring may form a dioxide, at, for example, page 16, lines 13-21. In

addition, the specification positively recites specific examples of compounds wherein R<sup>3</sup> is 1,1-

dioxidotetrahydro-2H-thiopyran-4-yl, such as, for example, compound no. 125 at page 67.

No new matter has been added.

Entry and consideration of this Amendment are respectfully requested.

Respectfully submitted,

L. Raul Tamayo

Registration No. 47

SUGHRUE MION, PLLC

Telephone: (202) 293-7060

Facsimile: (202) 293-7860

WASHINGTON OFFICE 23373

CUSTOMER NUMBER

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